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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,220	01/16/2001	Keiichi Hayashi	Q62674	9946

7590	07/14/2005

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EXAMINER
PEREZ, JULIO R

ART UNIT	PAPER NUMBER
2681	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 February 2005*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☒ All　b)☐ Some * c)☐ None of:

　　　1.☒ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 2/22/05 have been fully considered but they are not

persuasive. The applicant argues that Lin et al. do not disclose or suggest melody data

containing tone data or information. However, the examiner respectfully disagrees.

Melody as defined, "it is series or arrangement of sounds," "a selection of musical

scores," or "a series of tone patterns, which make a melody." Therefore, music scores

or tone patterns make up a melody, which, indeed, brings along tune information

associated with it (col. 3, lines 9-29; col. 4, lines 1-11).

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 1- 3, 8 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by

Lin et al. (6366791).

Regarding claim 1, Lin et al. disclose a mobile communication terminal equipped

with an Internet browser function, comprising: means for fetching melody data from a

web-based server apparatus by using said browser function (col. 3, lines 9-29; col. 4,

lines 1-11; Figs. 2, 4, the mobile stations comprise the capability to access the web

page of the network in order to download musical scores, that is melody data,

containing ringing tones); and tone setting means for setting ringing tones based on

tone information contained in said melody data (col. 4, lines 1-57; col. 5, lines 1-2; col.

5, lines 16-27; Fig2. 2, 4, the ringing tones can be implemented once received and

stored within the SIM, where the ringing tones are programmed in accordance with the

ringing tone patterns).

Regarding claim 2, Lin et al. disclose the mobile communication terminal,

wherein if said melody data contains no tone information, said tone setting means sets

a ringing tone based on preset tone information (col. 3, lines 31-67; col. 4, lines 1-11,

the download is executed based on the contents of the music or tones desired by the

subscriber and approved beforehand by the subscriber; if no tone is approved, hence,

no tone would be downloaded, and indeed the same tone some tones already stored

will stay active).

Regarding claim 3, Lin et al. disclose the mobile communication terminal,

wherein if said melody data contains tone information, said tone setting means judges

the validity of said tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the

system may determine the type of tones to be downloaded during the decision to

acquire the tones from the web server).

Regarding claim 8, Lin et al. disclose a ringing method for a mobile

communication terminal equipped with an Internet browser function, comprising: having

access to a web-based server equipment by means of said browser function (col. 3,

lines 9-29; col. 4, lines 1-11; Fig. 2, refs. 35, 40, 45, 55; Fig. 4, the mobile stations

comprise the capability to access the web page of the network in order to download

musical scores, that is melody data); notifying said server equipment of desired melody

data in conformity with said access (col. 3, lines 21-29; Fig. 2, the terminal may be used

to request musical tones from the server via the Internet); receiving said desired melody

data from said server equipment (col. 3, lines 31-46; col. 4, lines 1-11, the mobile

obtains the musical tones from the server for later playing); storing said received

desired melody data (col. 2, lines 22-57; col. 4, lines 12-38; Fig. 4, the terminal

possesses the capability to store the melody tones within); judging whether said stored

melody data contains tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the

system may determine the type of tones to be downloaded during the decision to

acquire the tones from the web server); fetching said tone information if it is judged that

said melody data contains the tone information (col. 3, lines 31-67; col. 4, lines 1-11;

Fig. 2, 4, the system may determine the type of tones to be downloaded during the

decision to acquire the tones from the web server); setting a tone for playing a melody

in accordance with said melody data, based on said fetched tone information (col. 4,

lines 1-57; col. 5, lines 1-2; col. 5, lines 16-27, the ringing tones can be implemented

once received and stored within the SIM, where the ringing tones are programmed in

accordance with the ringing tone patterns); and playing said melody in said set tone (it

is inherent as evidenced by the fact that one of ordinary skill in the art would have

recognized that the tone is to be played as soon as a ringing melody is downloaded, col.

3, lines 9-46).

Regarding claim 9, Lin et al. disclose the ringing method for a mobile

communication terminal, wherein if said melody data contains no tone information, a

ringing tone is set based on preset tone information (col. 3, lines 31-67; col. 4, lines 1-

11, the download is executed based on the contents of the music or tones desired by

the subscriber and approved beforehand by the subscriber; if no tone is approved,

hence, no tone would be downloaded, and indeed the same tone some tones already

stored will stay active).

Regarding claim 10, Lin et al. disclose the ringing method for a mobile

communication terminal, wherein if said melody data contains tone information, the

validity of said tone information is judged (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2,

the system may determine the type of tones to be downloaded during the decision to

acquire the tones from the web server).

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 4-7, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Lin et al. (6366791) in view of Yoshino et al. (6308086).

Regarding claims 4, 11, Lin et al. do not explicitly disclose the mobile

communication terminal, wherein said tone setting means sets ringing tones by

performing a modulation processing based on said tone information contained in said melody data.

Yoshino et al. teach a mobile communications terminal with extraction of audio signal frequencies means, which, in turn need to be converted to readable form to a transducer (col. 4, lines 32-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include modulation processing as per the teachings of Yoshino et al. so that the set ringing tones in the musical scores can be executed as ringing tone patterns on the MS.

Regarding claims 5, 12, the combination of Lin and Yoshino discloses, wherein said tone information contained in said melody data constitutes tone parameters used for said modulation processing (Yoshino, col. 4, lines 34-36, the extracting of frequency components from the audio signal, corresponds to ringing or tone parameters).

Regarding claims 6, 7, 13, 14, Lin et al. do not explicitly disclose the mobile communication terminal, further comprising: ringing-speed setting means for setting a tempo at which a melody is played in accordance with said melody data.

Yoshino et al. teach a mobile communications terminal with periodicity controlling means to control the rhythm of a melody to be reproduced (col. 2, lines 54-55; col. 6, 16-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et

al. so as to include rhythm computational means as per the teachings of Yoshino et al. so as to have means of a timing signal for setting a tempo; that is, the relative speed at which music is played in accordance with the melody data being received.

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio R. Perez whose telephone number is (571) 272-7846. The examiner can normally be reached on 7:00 - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272- 4090. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

JP
7/8/05

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PRIMARY EXAMINER